International Brotherhood of Teamsters, Local 776, AFL–CIO (Carolina Freight Carriers Corporation) *and* Timothy M. Blosser. Case 5–CB–7884

November 7, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On March 24, 1997, Administrative Law Judge Michael O. Miller issued the attached decision. The Respondent filed exceptions and a supporting brief[1] and the General Counsel filed an answering brief.

The National Labor Relations Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] and to adopt the recommended Order as modified.[4]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, International Brotherhood of Teamsters, Local 776, AFL–CIO, Harrisburg, Pennsylvania, its officers, agents, and representatives, shall take the action set forth in the Order.

Substitute the following for paragraphs 2(a) and (b), and reletter the subsequent paragraph:

''(a) Within 14 days after service by the Region, post at its business office and meeting halls copies of the attached notice marked ''Appendix.''[12] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. Inasmuch as the Employer has gone out of business during the pendency of these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all employees in the collective-bargaining unit described herein who were employed by the employer at its Carlisle, Pennsylvania facility at any time from May 27, 1994 until the closing of that facility. The notice shall be mailed to the last known address of each of the employees, after being signed by the Respondent's authorized representative.''

Stefan Jan Marculewicz, Esq., for the General Counsel.
Ira Weinstock, Esq., for the Respondent.
Timothy Blosser, pro se, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MICHAEL O. MILLER, Administrative Law Judge. This case was tried in York, Pennsylvania, on December 16, 1996, based on a charge filed by Timothy M. Blosser, an individual (Blosser or the Charging Party), on June 22, 1994, and a complaint and notice of hearing which was issued on March 30, 1995, by the Regional Director for Region 5 of the National Labor Relations Board (the Board), as amended. The complaint alleges that International Brotherhood of Teamsters, Local 776, AFL–CIO (Respondent or the Union) violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act) by failing to advise Blosser of his legal rights with respect to his union membership and financial obligations when seeking to enforce a union-security agreement with respect to his employment by Carolina Freight Carriers Corporation (Carolina or the Employer). Respondent's timely filed answer denies the commission of any unfair labor practices.

[1] The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and positions of the parties.

[2] In adopting the judge's finding that the Respondent violated Sec. 8(b)(1)(A) by requiring the objecting Charging Party to pay the full initiation fee without apportioning it into chargeable and nonchargeable expenses, we rely on *California Saw & Knife Works*, 320 NLRB 224, 235 fn. 59 (1995).

[3] There are no exceptions to the judge's finding that the Respondent did not breach its duty of fair representation by including in its computation of ''core'' expenses chargeable to objecting nonmembers, its costs of organizing other units. Thus, we do not reach the issue raised by Chairman Gould. Chairman Gould agrees that there were no exceptions to the judge's dismissal of allegations that the Union violated Sec. 8(b)(1)(A) by including organizing expenses as chargeable in the computation of ''core expenses.'' But, as he stated in his partial dissent in *Teamsters Local 443 (Connecticut Limousine Service)*, 324 NLRB 633, 638 (1997), in his view, the Supreme Court's decision in *Ellis v. Brotherhood of Railroad, Airline & Steamship Clerks*, 466 U.S. 435 (1984), compels the finding that organizing costs are not chargeable as a representational expense under the Act.

We note that the complaint does not allege that the language of the union-security clause requiring unit employees to ''become and remain members in good standing'' renders the clause facially invalid. Thus, we do not reach the issue raised by Chairman Gould. Chairman Gould agrees that the complaint does not allege that the union-security clause is facially invalid because of its requirement that unit employees ''become and remain members in good standing.'' But, as stated in his partial dissent in *Connecticut Limousine Service*, supra at 638, and his concurring opinion in *Monson Trucking, Inc.*, 324 NLRB 936, 941 (1997), he agrees with the Sixth Circuit, except to the extent that its reasoning relies on *Pattern Makers' League v. NLRB*, 473 U.S. 95 (1985), that clauses containing such language are facially invalid. See *Buzenius v. NLRB*, 124 F.3d 788 (6th Cir. 1997).

[4] Because the parties stipulated at the hearing that the appropriate unit consisted of employees represented by the Respondent at the Employer's Carlisle, Pennsylvania facility, we have modified the Order to require that the Respondent mail notices only to those unit employees employed at the Carlisle facility during the period of May 27, 1994, until the facility closed in 1995.

On the entire record, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Employer, a North Carolina corporation, with an office and place of business in Carlisle, Pennsylvania, was, at all material times, engaged in the interstate transportation and delivery of freight and commodities.[1] In the 12 months preceding issuance of complaint, a representative period, the Employer derived gross revenues in excess of $50,000 for the transportation of freight and commodities from within the State of Pennsylvania directly to points located outside of that State. The complaint alleges, Respondent admits, and I find and conclude that Carolina was at all times material an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Collective-Bargaining Relationship*

Since before 1994, the Employer had recognized Respondent (and the Teamsters National Freight Industry Negotiating Committee) as the exclusive collective-bargaining representative of its employees in a unit appropriate for collective-bargaining purposes.[2] The collective-bargaining agreement includes a ''Union Shop'' clause which requires existing union members to maintain their membership in good standing and

> [a]ll present employees who are not members of the Local union and all employees who are hired hereafter [to] become and remain members in good standing of the Local Union as a condition of employment on and after the thirty-first (31st) day following the beginning of their employment or on or after the thirty-first (31st) day following the effective date of this subsection or the date of this Agreement, whichever is later.

It further provides that an employee ''who has failed to acquire, or thereafter maintain, membership in the Union . . . shall be terminated seventy-two (72) hours after his Employer has received written notice from . . . the Local Union.''

This agreement, the parties stipulated, had been maintained and enforced with respect to the employees at Carolina's Carlisle, Pennsylvania terminal.

B. *Blosser's Hire*

Carolina hired Timothy Blosser on May 2, 1994,[3] as a casual dock laborer. As a casual, he had no set or guaranteed hours; his schedule was determined each week. It was Blosser's understanding, consistent with the language of the collective-bargaining agreement, as referenced in footnote 2, that he was included within the bargaining unit and obligated to pay dues and initiation fees pursuant to the union-security clause.

On May 27, the Union sent Blosser a registered letter outlining what it asserted were his union membership and financial obligations. That letter stated:

> Our Constitution states that after thirty (30) calendar days, you are required to join the Local Union. . . . Your initiation fee is $200.00 plus the first month's dues which is two times your hourly rate, plus one dollar ($1.00) assessment for the death benefit. . . .
>
> According to our records, your first day of employment at Carolina Freight was May 2, 1994. Therefore, per the terms of our agreement with Carolina Freight and as outlined above, you are hereby notified that you must come into the Local Union office and join and/or become a member in good standing in the Local Union on, but not before June 2, 1994. Upon failure to comply on this date, we shall contact your employer to inform him that you are not eligible to work.
>
> If you have any questions regarding Teamsters Local Union No. 776 or are no longer employed by the above-mentioned company, please feel free to call.

The letter omitted any reference to employee rights to opt out of full membership or pay less than the full amount of dues.

On June 1, Blosser responded to the Union's demand. Citing *Paramax Systems*,[4] he described, as a violation of the duty of fair representation, a union's maintenance and application of a union-security clause requiring membership in good standing without advising the unit employees that their obligation was limited to the payment of uniform initiation fees and dues.

Additionally, citing *Beck*,[5] Blosser asserted that nonmembers ''do not have to pay a fee equal to union dues,'' that they ''can only be required to pay a fee that equals their share of what the union can prove is its costs of collective bargaining, contract administration, and grievance adjustment with their employer.''[6]

Finally, asserting that the Union's demand was not in compliance with ''the NLRB General Counsel's memo-

[1] The parties stipulated that the Employer ceased its operations in the summer of 1995 and is no longer in business.

[2] Included in that unit are the employees ''in the classifications of work covered by th[e] National Master Freight Agreement'' and approved supplements thereto. The unit includes dock laborers and the contract's definition of employees obligated under the union-security clause includes casuals.

[3] All dates hereinafter are 1994 unless otherwise stated.

[4] *Electrical Workers IUE Local 444 (Paramax Systems),* 311 NLRB 1031 (1993).

[5] *Communications Workers v. Beck*, 487 U.S. 735 (1988).

[6] His letter continued, setting out claimed ''procedural safeguards before there can be any *collection/deduction* of dues or fees from nonmembers'' following *Chicago Teachers Union Local 1 v. Hudson*, 475 U.S. 292 (1986). These included a requirement that the dues be properly reduced before any payment is exacted, rather than rebated, a justification of the amounts demanded and prompt review of disputed amounts by an impartial decisionmaker. *Hudson* was a public sector case, implicating state action and Constitutional limitations not necessarily controlling, but providing guidance, to the private sector. *California Saw & Knife Works*, 320 NLRB 224 (1995).

randum on *Beck* and *Hudson*, he stated that he would file an unfair labor practice charge against it with the Board.[7]

The Union replied on June 3, notifying Blosser that ''the fees established by our auditor is [sic] 87% of the two times the hourly rate, and $1.00 for the death benefit, plus the $200.00 initiation fee.'' Accordingly, the dues, he was told, would be $26.10 per month. He had, he was told, 7 days to comply before the employer would be informed not to assign him work.

The correspondence continued. Blosser replied, insisting that, ''before the union demands fees, an *independent* accountant's verification of the union's cost of collective bargaining, NOT the union's interpretation'' must be provided. Because no such verification had been provided, Blosser asserted that no payment could be demanded and that he would await receipt of that verification.[8] He also asserted that the initiation fee should similarly be reduced by the appropriate percentage, 87 percent according to the Union's calculation. Finally, he requested a copy of the collective-bargaining agreement.

On June 20, the Union sent Blosser the ''latest auditor's verification of the core fees,'' those for 1993, noting that the computations of the core fees using the 1994 financial information was in process. The computation showed the Union's expenses and the portion of those expenses, if any, which were chargeable under *Beck*. It concluded that the expenses chargeable to protesting members amounted to 86.7 percent of the total expenses.

Blosser was also told that copies of the National Master Freight Agreement and the supplement applicable to Carolina are ''given to all members when they become members of the Union.'' A hope was expressed that his dues and initiation fee would be received within 72 hours.

On June 24, the Union sent Blosser a computer-generated letter reiterating his obligation to pay the initiation fee and dues. The sums demanded were the full dues and initiation fee; there was no reference to any adjustments under *Beck*. It also reiterated his obligation to ''become a member in good standing'' with no reference to his right to chose financial core membership and it threatened to notify his employer that he was ineligible to work if he did not comply within 72 hours.

Blosser wrote back on June 27, asserting that he was entitled to the independent auditor's complete audit or his complete review, as well as his opinion letter, for the Local's expenses as well as those of the Union's District and National levels, where some of the dues money goes. He also threatened to file an additional unfair labor practice charge if he did not get a copy of the collective-bargaining agreement, to which he claimed entitlement as a member of the unit.

On June 29, the Union gave him a copy of the contract. The other information he sought, the Union stated, was ''being investigated as to the legality;'' he was promised a subsequent response.

Blosser never became a member of the Respondent; neither did he pay it any fees or dues. He voluntarily left Carolina's employ on June 29.

[7] The letter, of course, was the result of communications with and guidance by the ''Right to Work'' Committee.

[8] He referenced, and attached, portions of NLRB Memorandum GC 88–14 concerning the *Beck* guidelines.

C. *Issues*

The issues here all involve questions of whether the Union breached its duty of fair representation, in violation of Section 8(b)(1)(A) of the Act, by:

> 1. Failing, at various times, to notify Blosser of his right to be and remain a nonmember of the Union, i.e., of those rights which derive from *NLRB v. General Motors*, 373 U.S. 734 (1963).
> 2. Failing, at various times, including when it was attempting to enforce the contractual union-security clause and require payment of the full initiation fee and dues, to provide Blosser with the information required pursuant to *Communications Workers of America v. Beck*, 487 U.S. 735 (1988).
> 3. Failing, at various times, to provide Blosser with sufficient information and time within which to satisfy whatever dues obligation he bore.
> 4. Insisting that Blosser pay the full initiation fee, without apportionment for the Union's nonrepresentational expenses.
> 5. Including, within the expenses deemed representational, the moneys spent by the Union in organizing other workers.

Additionally, the Union raises the question of whether, even assuming that its conduct is otherwise violative, those violations are de minimus and not worthy of a remedy.

D. *Analysis and Conclusions*

1. The legal parameters

In *General Motors*, supra, the Supreme Court held that the obligation to acquire membership in a union pursuant to a union-security clause under Section 8(a)(3) had been, ''whittled down to its financial core.'' That is, employees could satisfy the membership requirements of a lawful union-security clause by merely meeting the financial obligations of such a clause, paying the uniform dues and initiation fees, without acquiring such membership as would subject them to the union's regulations and discipline.

In *Beck*, supra, the Court narrowed the financial obligations which could be imposed to those which were ''germane to collective bargaining, contract administration, and grievance adjustment.'' Thus, it found that Section 8(a)(3) ''authorizes the extraction [from objecting nonmembers] of only those fees and dues necessary to 'performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues.'''

In *California Saw & Knife Works*, 320 NLRB 224, 231–235 (1995), the Board held:

> that if a union seeks to apply a union-security clause to unit employees, it has an obligation under the duty of fair representation to notify them of their *Beck* rights before they become subject to obligations under the clause.
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> . . . .
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> . . . that the Union has an obligation under the duty of fair representation to give *Beck* rights notice to . . . newly hired nonmember employees at the time the

> Union seeks to obligate these newly hired employees to pay dues . . .
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> . . . .
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> . . . that when or before a union seeks to obligate an employee to pay fees and dues under a union-security clause, the union should inform the employee that he has the right to be or remain a nonmember and that nonmembers have the right (1) to object to paying for union activities which are not germane to the union's duties as bargaining agent and to obtain a reduction in fees for such activities; (2) to be given sufficient information to enable the employee to intelligently decide whether to object; and (3) to be apprised of any internal union procedures for filing objections. If the employee chooses to object, he must be apprised of the percentage of the reduction, the basis for the calculation, and the right to challenge these figures.

In footnote 57 of *California Saw*, the Board further noted that:

> . . . the *Beck* rights accrue only to nonmembers. Thus, in order to fully inform nonmember employees of their *Beck* rights, a union must tell them of this limitation, and must tell them of their *General Motors* right to be and remain nonmembers. [Id. at 235.]

Application of the legal precedent to the stipulated facts as set forth above requires, for most of the issues, little discussion.

2. *General Motors* notice

The union-security clause in Respondent's collective-bargaining agreement requires all employees ''to become and remain members in good standing.''[9] On May 27, and on June 24, the Union demanded that Blosser ''join and/or become a member in good standing in the Local Union.'' At no time was he told that he had a right to be and remain a nonmember. By failing to so inform him, Respondent breached the duty of fair representation owed to him as a member of the bargaining unit and thereby violated Section 8(b)(1)(A). *California Saw & Knife*, supra; *Paperworkers Local 1033 (Weyerhaeuser Paper Co.)*, 320 NLRB 349–350 (1995). In the latter case, the Board noted that employees were apt to be misled as to the extent of their obligations by a demand that they join and pay dues. It stated:

> Because of this potential to mislead, we held [in *California Saw*] that the union acted arbitrarily and in bad faith in violation of the duty of fair representation by failing to give notice of *Beck* rights to newly hired nonmember employees. [Fn. omitted.] We accordingly held that basic considerations of fairness obligate a union to notify newly hired nonmember employees of their rights under *Beck* and *General Motors*, at the time the union first seeks to obligate these newly hired nonmember employees to pay dues.
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> . . . .
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> . . . we hold that in order for all unit employees subject to a union-security provision to exercise their *Beck* rights meaningfully, the law requires that notice of those rights include notice that the only way in which they can do so is to exercise the right under *General Motors* to become nonmembers. On this basis, we [find] that the Respondent violated Section 8(b)(1)(A) by failing to give the requisite notice.

2. *Beck* rights

As set forth in *California Saw*, a union, when it seeks to enforce a union-security clause, is required to inform the employees of their rights under *Beck*. Thus, they must tell the employees that they are not required to pay the full dues and fees, give those employees information on which to intelligently decide whether to object and apprise them of the union's internal procedures for filing objections. Respondent did none of these when it made repeated demands upon Blosser that he join the Union and pay dues. It thus failed in its duty of fair representation, in violation of Section 8(b)(1)(A).

3. Failure to afford adequate time to act—threat of discharge

In its various demands that he pay the dues and the initiation fee and join the Union, Respondent gave Blosser only 3 to 7 days in which to decide and act, on pain of the loss of his job if he failed to comply. At the times it did so, Respondent had not yet provided him with the *Beck* notifications to which he was entitled. The General Counsel argues that by failing to give Blosser a reasonable time within which to satisfy his dues obligation, Respondent further breached its duty of fair representation. In support of that argument, the General Counsel cites *Electrical Workers IBEW Local 99 (Electrical Maintenance)*, 312 NLRB 613 (1993); and *Radio Electronic Officers Union (Sea-Land Service Inc.)*, 306 NLRB 43 (1992), wherein the employees were given but 5 and 15 days, respectively, to meet their dues obligations before the unions involved caused their discharges.

Here, while Respondent told Blosser that he had but 3 to 7 days to join and pay before it would cause the employer to discharge him, it never sought his discharge. Rather, it let those self-imposed deadlines pass, while exchanging correspondence with him concerning the extent of his dues obligation. Accordingly, I find that the General Counsel has failed to establish that the Union has breached its duty of fair representation toward Blosser in this particular aspect. To the extent that the complaint alleges this to be a breach of its duty of fair representation by failing to give him adequate time to meet whatever dues obligation he had, I shall recommend that it be dismissed.

However, the complaint further alleges this conduct more generally as unlawful restraint and coercion. I agree. By threatening to cause his termination if he did not join the Union in an unreasonably short time and without the information necessary for him to reasonably decide whether to as-

[9] I reject Respondent's argument in brief that art. 3, sec. 1(e)(1) clarifies the membership obligation so as to be consistent with *General Motors*. That section sets out an agency shop provision to be applicable ''in any state where the provisions of this Article relating to Union shop cannot apply,'' i.e., which have a ''right to work'' law. There is no evidence that it was applicable in Pennsylvania. I find that its limitation to those states which prohibit traditional union-security clauses renders it sufficiently ambiguous as to preclude it being considered a notification of rights under *General Motors*.

sume objector status, Respondent has restrained and coerced him in violation of Section 8(b)(1)(A).

4. Demand for the full initiation fee

Respondent's repeated demands on Blosser continued to seek payment of the full $200 initiation fee, even after it acknowledged that some portion of the dues were not chargeable to objectors as representational expenses. The General Counsel contends that Respondent's failure to apply the apportionment to both dues and the initiation fees breached its duty of fair representation. I agree. The Court, in *Beck*, at the very outset of its decision, noted that Section 8(a)(3) permitted union-security agreements which would require employees to pay ''periodic dues and initiation fees as a condition of continued employment.'' It phrased the issue as whether that section permitted ''a union, over the objection of dues-paying nonmember employees, to expend *funds so collected* on activities unrelated to collective bargaining, contract administration, or grievance adjustment.'' (Emphasis added.) The Court made no distinction between funds collected by unions as periodic dues or as initiation fees. Similarly, at the conclusion of its *Beck* decision, the Court held that Section 8(a)(3) authorized ''the exaction of only those *fees and dues* necessary to 'performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues.'''

The complaint expressly raised the issue of the Union's attempt to collect the full initiation fee from Blosser. Respondent offered no evidence that funds derived from initiation fees were expended differently than those derived from periodic dues and presented no argument on brief that initiation fees should be exempt from the *Beck* apportionment. Accordingly, I find that by seeking to require Blosser, a nonmember objector, to pay the full initiation fee, Respondent breached its duty of fair representation and thereby violated Section 8(b)(1)(A).

5. Organizing expenses

In its computation of ''core fees,'' the Union included, as chargeable to objecting employees, its organizing expenses. The complaint alleges that by the inclusion of such expenses the Union has breached its duty of fair representation.

In *Beck*, the Court pointed out that the requirement of ''membership'' within the ambit of Section 8(a)(3) had been ''whittled down to its financial core,'' pursuant to *General Motors*. It further concluded that this ''financial core'' did not include the support of ''union activities beyond those germane to collective bargaining, contract administration, and grievance adjustment.'' *Beck*, supra at 745. The Board, in *California Saw*, applied this standard to all expenses, including litigation expenses. It held, in language which I deem directly applicable to organizing expenses:

> [A] union does not breach its duty of fair representation by charging objecting employees for litigation expenses as long as the expense is for ''services that may ultimately inure to the benefit of the members of the local union by virtue of their membership in the parent organization.'' [Quoting from *Lehnert v. Ferris Faculty Assn.*, 500 U.S. 507 at 524 (1991).] We believe that this narrowly tailored approach is consistent with the congressional intent in enacting the first proviso to Section 8(a)(3)—to avoid the problem of ''free riders''—in those circumstances where the union undertakes litigation on behalf of one bargaining unit which is likely to benefit other bargaining units. [Fn., noting that then Member Cohen would find the violation, omitted.]

It is axiomatic that the organizing of other bargaining units, at least within the same industry and/or geographical area, strengthens a union's hand in bargaining with the employer of objecting employees. Successful organization of the employees of an employer's competitors precludes that employer from arguing, at the bargaining table, that the lesser wages and benefits paid by his union-free competition prevents him from granting wage and benefit increases sought by the union which represents his employees. It also tends to increase the support which his employees will receive should they find it necessary to engage in economic action, such as a strike. Organizing of other employees thus inures ''to the benefit of the members of the local union by virtue of their membership in the parent organization.''

Moreover, in order to avoid the ''free rider'' problem, referred to above, it is essential that a union be permitted to charge objecting nonmembers for its expenses in organizing other units. The bargaining unit in which the objector finds him or herself has already been organized. The expense of that organizational effort was borne by the union (and its members in previously organized units) sometime in the past; it can no longer be charged to current employees. Only by permitting a union to pass along the cost of its current organizing efforts to the members of its already organized units can it equitably recoup those expenses.[10]

It may be that some organizing expenses are too remote, in terms of industry or geography, to pose more than a theoretical benefit to the objector's bargaining unit. However, here, as in *California Saw*, supra, 320 NLRB at 239, ''the General Counsel litigated this case on the proposition that [organizing expenses] are necessarily nonchargeable.'' The Board disagreed with the proposition that litigation expenses were nonchargeable ''as a matter of law'' and dismissed the allegation. I find that organizing expenses are not ''necessarily nonchargeable . . . as a matter of law'' and recommend dismissal of this allegation.

6. De minimus violations

Respondent asserts that even if some or all of its conduct is deemed violative, those violations are de minimus. Coun-

[10] The Supreme Court, in *Ellis v. Railway Clerks*, 466 U.S. 435, at 452–453 (1984), rejected the chargeability of organizing expenses as well as that of extra-unit litigation expenses. The Board, in *California Saw*, supra at 238, expressly recognized what the Court had said with respect to extra-unit litigation but noted that those ''holdings were premised in constitutional considerations.'' It found ''precedent grounded in constitutional considerations not to be binding in the context of the NLRA'' and did ''not read *Ellis* . . . as foreclosing our conclusion that some litigation may be of value to employees even when the lawsuit at issue arises out of the contract or circumstances of employees in a different unit.'' Organizing expenses and those for litigation are remarkably similar as to their impact on other units and I find the Board's logic compelling. Indeed, given the differences in unit compositions and the nature of organizing under the RLA, the argument that such expenses are recoverable under the NLRA is all the more compelling.

sel points out, as the facts clearly show, that Blosser was fully aware of his *Beck* and *General Motors* rights. He did not need the Union to tell him that he could remain a nonmember or that he could pay less than the full amount of dues and fees. Indeed, he knew that he had a right to object and he described for the Union the information to which he was entitled.

However, he was not in possession of all of the information to which he was entitled. He was entitled to be told what percentage of the dues and fees were chargeable and the basis of that calculation, he was entitled to sufficient information to enable him to decide whether to object and he was entitled to be apprised of his right to challenge the Union's figures and of any internal union procedures for filing objections.

More importantly, the test is not whether the Union's conduct would restrain or coerce this particular employee but whether ''the alleged offender engaged in conduct which tends to . . . restrain or coerce employees in the exercise of the rights guaranteed them in the Act.'' *Steelworkers Local 5550*, 223 NLRB 854, 855 (1976); *Operating Engineeers Local 542 (Giles & Ransome, Inc.) v. NLRB*, 328 F.2d 850, 852 (3d Cir. 1964), cert. denied 379 U.S. 826 (1964). The Board, in *California Saw* and subsequent cases applying the *Beck* principles, has found this conduct to have such a tendency.

Respondent also points out that Blosser voluntarily ceased his employment with Carolina Freight before the Union effectuated its threats or secured the payment of any dues or fees from him. Additionally, it points out, Carolina Freight has ceased all of its operations. However, the salient point is that Respondent is still functioning as a labor organization, applying the same agreement, or its successor, to other employers and other employees. A remedy is thus still called for.

CONCLUSIONS OF LAW

1. By failing to notify Timothy Blosser, an employee, when first seeking to obligate him to pay fees and dues under a union-security clause, of his right to be and remain a nonmember, and of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to the Union's duties as bargaining agent, and to obtain a reduction in fees for such activities, the Union has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

2. By failing to reduce the initiation fee demanded of Timothy Blosser by the percentage attributable to nonchargeable expenses, the Union has violated Section 8(b)(1)(A).

3. By threatening to cause the discharge of Timothy Blosser for failing to meet his alleged union membership obligations in an unreasonably short period of time and without providing him with the information required under *NLRB v. General Motors*, 373 U.S. 734 (1963), and *Beck*, supra, the Union has violated Section 8(b)(1)(A).

4. The Respondent has not, in any other manner alleged in the complaint, violated the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[11]

ORDER

The Respondent, International Brotherhood of Teamsters, Local 776, AFL–CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing to notify employees, when first seeking to obligate them to pay fees and dues under a union-security clause, of their rights to be and remain nonmembers, and of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to the Union's duties as bargaining agent, and to obtain a reduction in fees for such activities.

(b) Failing to reduce the initiation fee demanded of objecting nonmember employees by the percentage attributable to nonchargeable expenses.

(c) Threatening to cause the discharge of employees for failing to meet their alleged union membership obligations in an unreasonably short period of time and without providing them with the information required under *NLRB v. General Motors*, 373 U.S. 734 (1963), and *Beck*, 487 U.S. 735 (1988).

(d) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its business office and meeting halls, copies of the attached notice marked ''Appendix.''[12] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. Inasmuch as the Employer has gone out of business during the pendency of these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to the Charging

[11] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[12] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

Party and all former employees employed by the Employer at any time since June 22, 1994, as provided below.

(b) Within 14 days after service by the Region, mail a copy of the attached notice marked ''Appendix''[13] to all employees in the collective-bargaining unit described herein who were employed by the Employer at its Carlisle, Pennsylvania facility at any time from the onset of the unfair labor practices found in this case until the closing of that facility. The notice shall be mailed to the last known address of each of the employees after being signed by the Respondent's authorized representative.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

[13] See fn. 12, supra.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to notify employees, when first seeking to obligate them to pay fees and dues under a union-security clause, of their rights to be and remain nonmembers of the Union and of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to the Union's duties as bargaining agent and to obtain a reduction in fees for such activities.

WE WILL NOT fail to reduce the initiation fee demanded of objecting nonmember employees by the percentage attributable to nonchargeable expenses.

WE WILL NOT threaten to cause the discharge of employees for failing to meet their alleged union membership obligations in an unreasonably short period of time and without providing them with the information required under *NLRB v. General Motors*, 373 U.S. 734 (1963), and *Communications Workers v. Beck*, 487 U.S. 735 (1988).

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 776, AFL–CIO